IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

Crl.MC.No. 2824 of 2007()

AGAINST THE JUDGEMENT/ORDER IN CRRP.754/2006 Dated 09/03/2006

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PETITIONER: PETITIONER-ACCUSED:

K.G. KANNAN DAS, S/O. GOPALAN ACHARI,
KARIMATTATHIL HOUSE, KUDAYATHOOR P.O.,THODUPUZHA.

BY ADV. SRI.T.M.RAMAN KARTHA

RESPONDENTS: RESPONDENTS-COMPLAINANT & STATE:

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1. THODUPUZHA CHITS AND
INVESTMENTS PVT. LTD., REPRESENTED BY ITS POWER
OF ATTORNEY HOLDER AND EXECUTIVE DIRECTOR,
K.R. MADHUSUDHANAN NAIR.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.K.G.RAJANIKANTH
PUBLIC PROSECUTOR ADV.SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C. No.2824 Of 2007

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Dated this the 12th day of September, 2007

ORDER

The petitioner has been found guilty, convicted and sentenced in a prosecution under Section 138 of the Negotiable Instruments Act. The verdict of guilty, conviction and sentence have become final with the order passed by this Court in revision. The petitioner now has to undergo imprisonment till rising of court. A further direction was issued that the petitioner must pay an amount of Rs.1,00,000/- as compensation and in default undergo S.I for a period of three months.

2. The petitioner along with the complainant has come before this Court and submits that the compensation amount has been paid and discharged. That amount having been paid by the accused and received by the complainant, there can be no question of any default sentence being executed against the petitioner. The petitioner and the 1st respondent/complainant need only satisfy the learned Magistrate that the entire liability to pay compensation has been discharged. They can appear before the learned Magistrate and file a statement to that effect. The position has been made crystal clear in **Girish v. Muthoot Capital Service (P) Ltd.** [2007(1) KLT 16].

3. What remains is only substantive sentence of imprisonment till raising of the Court. The petitioner now wants to rely on the decision in **Sabu George v. Home Secretary** [2007(1) KLT 982]

4. The dictum in **Sabu George** only shows that extraordinary inherent powers can be invoked to avoid miscarriage of justice even at the post revision stage. The said dictum has its foundation on the fact that but for the acceptance of the composition, the accused in that case would have been obliged to undergo incarceration in prison for a long period of time. To avoid such consequences inspite of the composition, the powers under Section 482 Cr.P.C were invoked in that case. That and that alone is the dictum in **Sabu George v. Home Secretary** [2007(1) KLT 982]. **Sabu George** is not authority for the proposition that in every case of post revision composition, the powers under Section 482 Cr.P.C can or must be invoked mechanically by this court.

5. In the facts and circumstances of this case, I am not at all persuaded to invoke the dictum in **Sabu George**. The petitioner faces only a sentence of imprisonment till rising of court. To save him from that punishment, I am not persuaded to invoke the powers under Section 482 Cr.P.C.

6. The petitioner can appear and serve the substantive sentence of imprisonment till rising of court. The petitioner shall expeditiously appear before the learned Magistrate to serve the sentence of imprisonment till rising of court. He along with complainant can file a proper statement signed by the parties and counter signed by the counsel to satisfy the learned Magistrate that compensation has actually been paid by the accused and received by the complainant.

7. This Criminal Miscellaneous Case is accordingly dismissed but with the above observation.

(R.BASANT, JUDGE)

sj

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007